

1999 SENATE TRANSPORTATION
SB 2434

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2434

Senate Transportation Committee

Conference Committee

Hearing Date February 11, 1999

Tape Number	Side A	Side B	Meter #
1		x	1,146-3005
2		x	1,916-end
Committee Clerk Signature <i>Row A. Schaeffer</i>			

Minutes:

SENATOR B. STENEHJEM opened the hearing on SB 2234. Committee members present included: Sens. Bob Stenehjem, R. Schobinger, D. Mutch, D. Cook, D. O'Connell, and V. Thompson. Senator Bercier was absent.

SENATOR KEN SOLBERG, DISTRICT #7 testified in support of SB 2234. A person who owns continuous land could put up a sign and that was plain old property rights. What about those who lease land by the highway for a business? This is to keep small businesses in business (he gave an example). We talk about regulations in ND but we have the most overzealous signage law in ND as any state in the union. When traveling last summer, many states can put up signs along the highway. If this is going to jeopardize our dollars, why aren't the other states being jeopardized with their dollars? The law says you cannot zone for signage yet the Highway Department zones for Newman signs. This bill says it does not have to be continuous. It means

if I live six miles off the highway with a Bed and Breakfast and I lease some land on the highway I can put up a sign. That is not too much for economic development in North Dakota.

SENATOR SCHOBINGER I spoke with a gentleman in Donnybrook, ND. He was asked by a farmer to put up a sign to advertise his place. Would this bill help him in that situation?

SENATOR SOLBERG Yes, he could lease that land for one dollar and put up a sign. I'm trying to keep people like that in business.

SENATOR SCHOBINGER Many times people drive by and don't even know he has a business.

SENATOR COOK The church I belong to put up a sign on Interstate 94. Is that illegal?

SENATOR SOLBERG The Highway Department overlooks church signs.

SENATOR COOK If that was a Bed and Breakfast then I could not put up a sign?

SENATOR SOLBERG If it was zoned commercial or industrial or if you're within 600 feet (he gave an example).

SENATOR B. STENEHJEM Is it legal for them to put a church sign on land not theirs on the highway?

SENATOR SOLBERG No, but they overlook religious signs. If in that same spot, a person who lived a quarter mile away, put up a sign for his auto repair shop that would be illegal.

SENATOR B. STENEHJEM The highbred corn feed signs are legal.

SENATOR SOLBERG Yes. You can put up a sign that says "Stenehjem Farms" but you cannot put up a sign that says "Stenehjem Durum Farms".

SENATOR SCHOBINGER Will this affect federal funding?

SENATOR SOLBERG I don't believe so.

SENATOR COOK Subsection 3 has to do with exceptions to the limitations. The name of the enterprise located on property used for the purpose advertised. If I had a Bed and Breakfast, I could advertise for it on property that is continuous or the same ownership.

SENATOR B. STENEHJEM It would allow one to put up a sign if they lease or rent it.

SENATOR SOLBERG Two years ago we added "continuous" to the language. I'm doing this for the rural areas. Inside the city limits, it is zoned industrial and commercial and you can put up a sign.

DAVID LEAR, NORTH DAKOTA DEPARTMENT OF TRANSPORTATION testified in opposition to SB 2434 (see testimony).

SENATOR SCHOBINGER How is that determined at the federal level? Would we be notified?

DAVID LEAR 23 USC 131 is passed by Congress and that is federal law. The Federal Highway Administration will come in and review. If they determine that we are not in compliance with federal law they can sanction us.

SENATOR SCHOBINGER Are there any other states that have laws close to what this bill is?

DAVID LEAR I'm not aware of that.

SENATOR B. STENEHJEM Are you aware of any states that were sanctioned because of this?

DAVID LEAR I'm not aware of any.

SENATOR B. STENEHJEM Could you find out?

DAVID LEAR Yes.

SENATOR B. STENEHJEM We will close the hearing on SB 2434.

February 11, 1999-Tape 2-Committee Discussion

SENATOR SCHOBINGER I motion for a Do Pass on SB 2434.

Page 4

Senate Transportation Committee

Bill/Resolution Number Sb2434

Hearing Date February 11, 1999

SENATOR O'CONNELL I second that motion.

SENATOR SCHOBINGER There is a potential for loss of funds but look at the handout. If it came to that point, we would change it.

A roll call vote was taken (4 Yeas, 2 Nays, and 1 Absent and Not Voting).

Senator Schobinger will carry SB 2434.

Date: February 11, 1999

Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2434

Senate Transportation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken As Pass

Motion Made By Sen. Schobinger Seconded By Sen. O'Connell

Senators	Yes	No	Senators	Yes	No
Sen. B. Stenejem-Chairman	X				
Sen. R. Schobinger-V. Chair	X				
Sen. Duane Mutch	X				
Sen. Dwight Cook		X			
Sen. David O'Connell	X				
Sen. Vern Thompson		X			
Sen. Dennis Bercier					

Total (Yes) 4 No 2

Absent 1

Floor Assignment Sen. Schobinger

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 12, 1999 3:33 p.m.

Module No: SR-29-2824
Carrier: Schobinger
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2434: Transportation Committee (Sen. B. Stenehjem, Chairman) recommends DO PASS (4 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2434 was placed on the Eleventh order on the calendar.

1999 HOUSE TRANSPORTATION

SB 2403

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2434

House Transportation Committee

Conference Committee

Hearing Date March 11, 1999

Tape Number	Side A	Side B	Meter #
1		X	45.3-55.0
2	X		0-11.0
Committee Clerk Signature <i>June Kern</i>			

Minutes:

CHAIRMAN KEISER OPENED THE HEARING ON SB 2434; A BILL RELATING TO OUTDOOR ADVERTISING.

SENATOR KEN SOLBERG, Dist. 7, introduced SB 2434. He said that the LadyBird Highway Beautification Act allows people in rural areas to put up signs relating to antique shops or seasonal shops. Wisconsin, Minnesota, and Indiana are already allowing this. None of them have lost or are losing any federal money from doing this. It also does not open it up for any business to do this, it simply says that they must own, lease, or rent the land that they put the sign up on. These are for those Mom and Pop shops that operate solely to supplement their income a bit. He said that we need the flexibility. This is a good bill. We are not going to lose any money.

Page 2

House Transportation Committee

Bill/Resolution Number sB 2434

Hearing Date March 11, 1999

OLE ARSVOLD, Dist. 20, testified in support of SB 2434. He also said that it is a good bill for those seasonal businesses. It only allows for 90 days of signage. The people who already do this are law abiding people who have to break the law to advertise their businesses.

MARSHALL MOORE, Director, Department of Transportation, testified in opposition to SB 2434. (See written testimony).

REP. KELSCH asked if the farm directional signs are a violation.

MARSHALL said no they weren't.

REP. LEMEIX mentioned Bed and Breakfasts in Anamoose. How could they advertise under current law?

CURT PETERSON, AGCA, testified in opposition to SB 2434. He noted that there was potential of \$15 million being withheld with the passage of this bill.

CHAIRMAN KEISER CLOSED THE HEARING ON SB 2434.

COMMITTEE ACTION

REP. KELSCH moved a DO NOT PASS on SB 2434. REP. THORPE seconded the motion.

The motion carried.

ROLL CALL - 11 YEA, 0 NAE, 4 ABSENT AND NOT VOTING.

FLOOR ASSIGNMENT - REP. MICKELSON

Date: 3/12
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2434

House Transportation Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DNP

Motion Made By Rep Kelsch Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Representative Keiser, Chair	✓		Representative Thorpe	✓	
Representative Mickelson, V. Ch.	✓				
Representative Belter	✓				
Representative Jensen	✓				
Representative Kelsch	✓				
Representative Kempenich					
Representative Price	✓				
Representative Sveen	✓				
Representative Weisz					
Representative Grumbo	✓				
Representative Lemieux					
Representative Mahoney	✓				
Representative Meyer	✓				
Representative Schmidt					

Total (Yes) 11 No 0

Absent 4

Floor Assignment Rep Mickelson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 12, 1999 1:27 p.m.

Module No: HR-45-4680
Carrier: Mickelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2434: Transportation Committee (Rep. Keiser, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). SB 2434 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY
SB 2434

February 11, 1999

Wayne A. McCollam, P. E.

OUTDOOR ADVERTISING LEGISLATION

Questions have been raised concerning sanctions in the highway beautification program. The following two questions and answers are furnished for information:

1. In the history of the highway beautification program what if any State(s) have been cited or sanctioned for not having an effective program? 2. If states have been sanctioned, what type or amount of sanction was levied?

Answer: South Dakota was sanctioned by losing 10% of its highway funds for a period of one year. The legislature then repealed the offending legislation and SD got its highway funds back. This happened in about 1978.

In 1977, four states (including South Dakota) were formally notified of failure to provide effective control: Alabama, New York, Oklahoma, and SD. A formal hearing was held for the SD and Alabama citations. Alabama, Oklahoma and NY all passed amending language that rectified the problem, so they did not lose any highway money (although the Alabama order was ready to go if the legislature did not pass certain language by a certain date).

There have been occasions of informal warnings, but they did not go beyond the warning stage.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL		# of pages
To	<i>Paul Pfieffe</i>	<i>1</i>
Dept./Agency		From <i>McCollam</i>
Fax #	<i>(701) 328-0103</i>	Phone #
NSN 7540-01-317-7368		Fax #
5089-101		GENERAL SERVICES ADMINISTRATION

SENATE TRANSPORTATION COMMITTEE

February 11, 1999

North Dakota Department of Transportation
Marshall W. Moore, Director

SB 2434

Mr. Chairman and members of the committee: NDDOT opposes SB 2434 because it will place the state in conflict with federal law.

Title 23 USC 131 requires that the states control the erecting and maintaining of outdoor advertising. Some signs, known as “on-property” or “on-premise” advertising, are exempt from 23 USC 131, which states that a sign may be placed on property if it advertises activities conducted on that property.

SB 2434 would allow anyone in the state to lease a small amount of property anywhere in the state and place outdoor advertising on that property. This does not qualify as “on-property” or “on-premise” advertising. It would remove NDDOT’s control over outdoor advertising, and that would place the state in violation of federal law.

Title 23 USC 131 says that each year in which a state doesn’t control its outdoor advertising, the Secretary of Transportation will reduce that state’s federal funding by 10 percent. Thus, not only would this bill remove our control of outdoor advertising, it would lose tens of millions of dollars for the state. NDDOT’s federal funding for 1999 is \$149 million; that could mean a loss of \$14.9 million if we aren’t in compliance.

HOUSE TRANSPORTATION COMMITTEE

March 11, 1999

North Dakota Department of Transportation
Marshall W. Moore, Director

SB 2434

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Title 23 USC 131 says that each year in which a state doesn’t control its outdoor advertising, the Secretary of Transportation will reduce that state’s federal funding by 10 percent. Thus, not only would this bill remove our control of outdoor advertising, it would lose tens of millions of dollars for the state. **NDDOT’s federal funding for 1999 is \$149 million; that could mean a loss of \$14.9 million if we aren’t in compliance.** We have provided FHWA documentation on states that were sanctioned for not controlling the erecting and maintaining of outdoor advertising.

Current law is flexible enough to provide the type of signing that SB 2434 is intended to allow -- tourist-oriented directional signs, or TODS – without removing our control over outdoor advertising or placing the state in violation of federal law. For instance:

- NDCC 39-13-09 says, “Tourist-related business, service, or activity” means rural agricultural business and tourism attractions, including recreation, historical sites, festival and cultural events, guide services, and lodging and food services which are singularly and uniquely related to historical, cultural, or recreational tourist attractions. (It does not include franchises.) This is a little-used program for which we have received only 11 applications. We have provided photographs of some existing signs.
- NDDOT sponsored SB 2158, which removes some details of the size and shape of the allowable signs, and will make the TODS program more flexible.
- In addition to the commercial billboard, on-premise sign, and TODS programs, section 37-05-04-04 of the Administrative Code of North Dakota says, “Farm directional signs may be erected on privately owned property for the purpose of directing the traveling public to individual farm sites.” We have provided photographs of some existing signs.

Again, we stress that current law is flexible enough to provide for tourist-oriented directional signs without removing our control over outdoor advertising or violating federal law and subjecting the state to possible sanctions.

If SB 2434 is passed, the state is sanctioned, and subsequently the legislature corrects the legislation that led to the sanction, the state will probably have to remove the signs that were erected during this period – at state expense.

BILLBOARD LEGISLATION

March 3, 1999
WAMcCollam, P. E.

The following discussion of the FHWA position on Senate Bill 2434 and history of sanctions was received this morning for our use. (Washington Office comments are in bold print)

Firm Position:

Hdq. Response: Headquarters memorandum dated February 6, 1999 states our position on North Dakota's Senate Bill 2434. The Division office may use this memorandum for a basis to draft any letters deemed necessary to state FHWA's position on this issue. Attached is an outline of the Penalty Action process. The Regional Administrator review has been eliminated from the outline, however you may want to send an information copy to the Resource Center. If deemed necessary the Division Administrator can start the process by an initial recommendation for Penalty action.

Alternate information on history of sanctions:

South Dakota has been penalized twice (1973 and 1977) for highway beautification control deficiencies.

1973

(1) In 1973 South Dakota adopted legislation zoning extensive areas along the Interstate and primary highways commercial and industrial. (2) The unzoned area definition in State law was unacceptable as basis for an agreement. \$3,361,546 was held in reserve, but restored to the State upon settlement of penalty with stipulations. The stipulations included enactment of complying legislation. Removal of certain signs at 100% State expense.

1977

In 1977 South Dakota adopted inadequate legislation after their complying legislation was found unconstitutional and voided by the State Supreme Court. \$2,505,103 was permanently withheld from the State. \$7,222,381 was reserved and later restored to the State with stipulations. The stipulations included enactment of complying legislation, execution of a State/Federal agreement, and removal of certain signs at 100% State expense. The State challenged the legality of the reservation pending final determination but lost in court (South Dakota vs. Adams). An appeal to the U.S. Supreme Court was denied. At the conclusion of the litigation, a total of \$4,085,598 was withheld from South Dakota and reapportioned to other States. However, of that amount \$1,580,495 was attributable to the State Interstate construction apportionment formula. The remaining amount of \$2,505,103, which remains permanently withheld, involved Interstate resurfacing, consolidated primary, rural secondary, urban system, and metropolitan planning funds.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages **6**

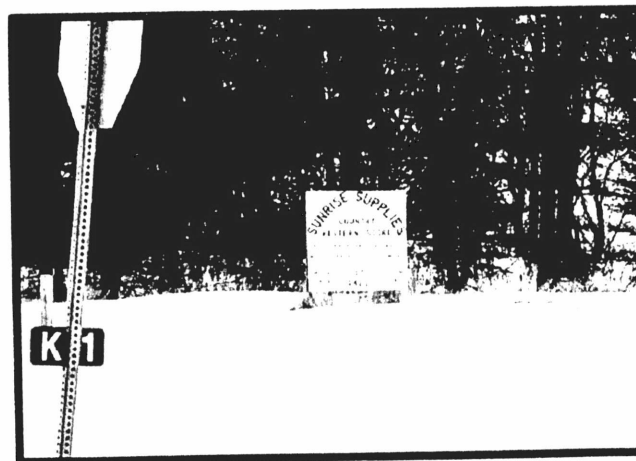
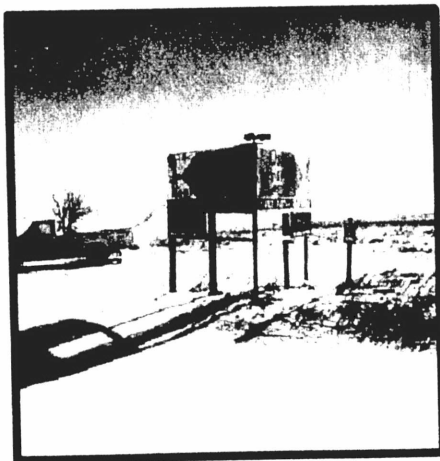
To <i>Paul Pfeife</i>	From <i>McCollam</i>
Dept./Agency	Phone #
Fax #	Fax #

On-Premise Signs

For many years, state law required that "on-premise" signs needed to be erected within 50 feet of the useful portion of the business activity being advertised. During the 1995 legislative session, state law was changed to the following definition:

Signs specifically advertising activities conducted, services rendered, goods sold, stored, produced, or mined, or the name of the enterprise that is located on property used for the purpose advertised or on property contiguous to the advertised activity which is under the same ownership, lease, rent, or control as the property with the advertised activity.

This change still met compliance with the 1965 Highway Beautification Act and the Federal Highway Administration. The pictures show how the change allowed rural businesses to advertise.



Tourist-Oriented Directional Signs

Tourist-oriented business. A business, service, or activity that receives the major portion of its income or visitors during the normal business season from motorists not residing in the immediate area of the business or activity. "Tourist oriented business" includes, but is not limited to (1) a greenhouse or nursery, (2) a bait and tackle shop, (3) a marina, and (4) a gift or antique shop.

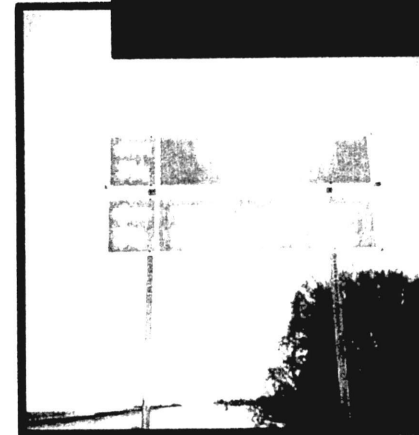
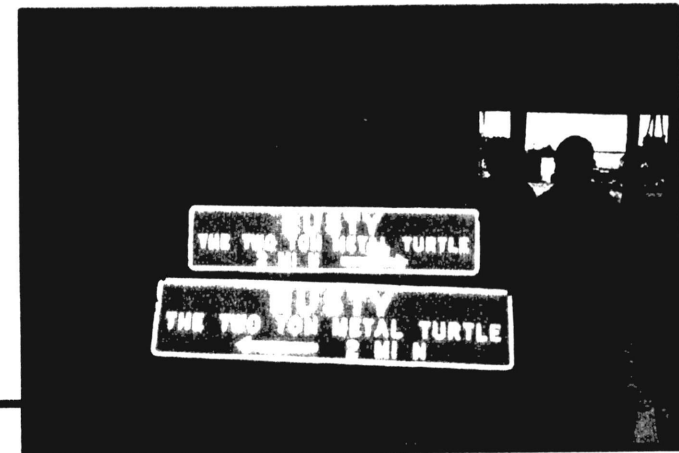
Rural Agricultural Business. Any commercial activity engaged in as a means of livelihood or profit, located completely outside any urban district or suburban area or residence district or business district, which provides goods, services, commerce, trade, or industry directly related to agriculture. "Agriculture" is defined as the science or art of cultivating the soil, producing crops, or raising livestock of any kind, and in varying degrees preparing these products for marketing and consumer use. A "rural agricultural business" should be the type of facility which requires space in a rural environment and cannot be located within developed areas of a city or town.

Rural Agricultural Businesses:

Agricultural equipment	Greenhouses
Commodity storage/elevators	Orchards/produce sales
Feed, seed, fertilizer stores	Tree farms, nurseries
Welding & machine shops for agricultural equipment	Farm implement dealers

Rural Tourist-Oriented Businesses:

Bait and tackle shops	Riding stables
"Camps"	Winter activities
Fee boat launch sites or marina	Zoos
Golf courses	Greenhouse or nursery
Houseboat rentals, etc.	Gift or antique shop
Recreational centers	



Farm Directional Signs

37-05-64-04. Farm directional signs. Farm directional signs may be erected on privately owned property for the purpose of directing the traveling public to individual farmsites.

1. The message contained on farm directional signs shall be limited to the identification of the farmsite owner and directions in miles [kilometers] or fractions thereof to the farmsite. Descriptive words, phrases, and pictorial or photographic representations of the activity at the farmsite or its logos are prohibited. The message may be located on both sides of the sign.
2. Farm directional signs shall not exceed eight square feet [.74 square meters] in area. No more than six farm directional signs may be located on the same structure.



Commercial Advertising Signs

In order to meet federal law, the following guidelines must be followed:

Advertising structures cannot be erected on state highway right of way and a permit is required for all commercial advertising signs which can be seen from the edge of the highway right of way. The area selected to erect a commercial message sign must be zoned either commercial or industrial, which is generally near towns. (See Example 1.)

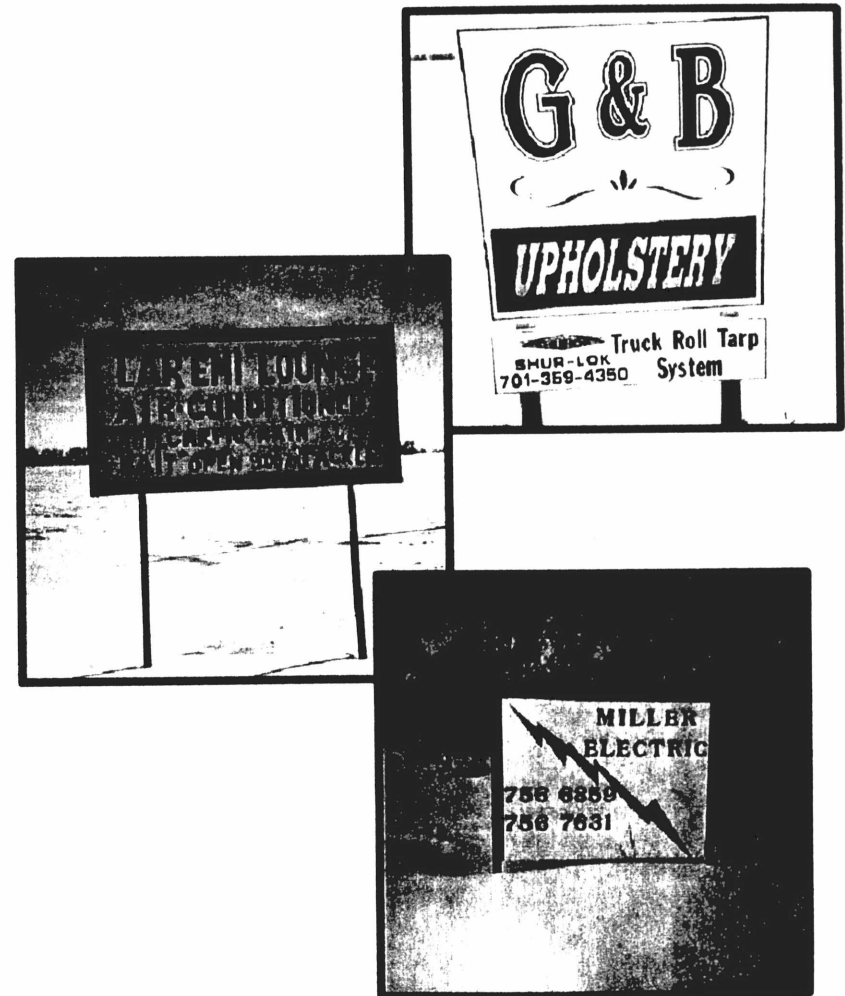
If there is no zoning in the area considered for signing, but there is an ongoing business activity adjacent to the highway that is also unzoned, the area can be considered an unzoned commercial zone. Therefore, any commercial signing can be placed within 600 feet of the business in either direction and on either side of the highway. Measurements begin from the used portion of the business including parking and storage areas. (See Example 2.)

Cities which use their extra territorial zoning jurisdiction and zone beyond their city limits, must use comprehensive zoning and not simply spot-zone next to the highway for the sole purpose of signing. In other words, the area must be zoned for commercial activities, not just for the purpose of erecting billboards.

In addition to zoning, there are spacing requirements:

Location	Spacing of Signs
Interstate Highways	At least 500 feet apart
Federal and Primary Highways (outside incorporated city limits) . .	At least 300 feet apart
Federal and Primary Highways (inside incorporated city limits) . . .	At least 100 feet apart

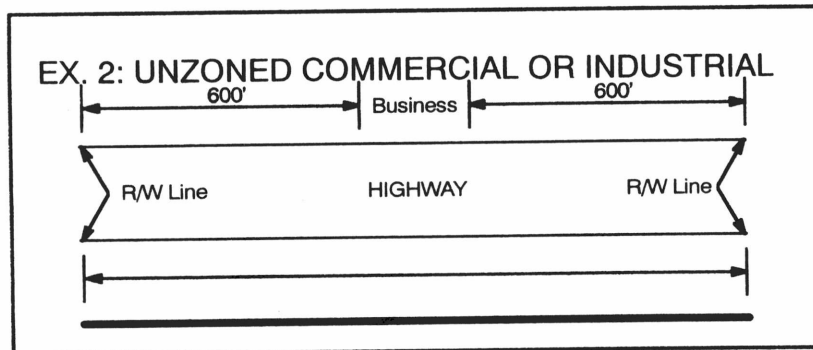
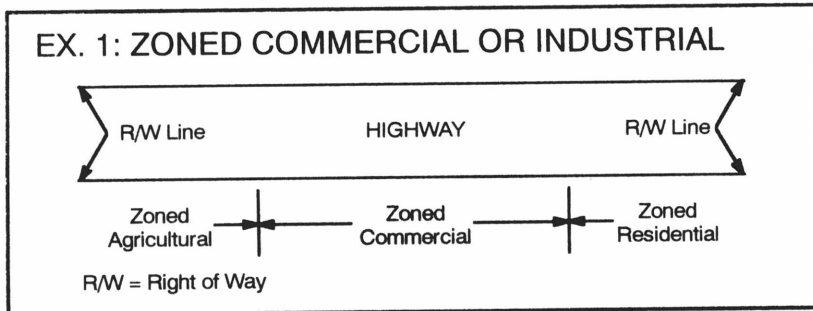
There are also size limitations the need to be met.



continued

Commercial Advertising Signs (con't)

This is only a basic overview of rules for outdoor advertising in North Dakota. Signs cannot be erected or exist unless state billboard laws are followed, which can be explained further by the North Dakota Department of Transportation (NDDOT.)



How Do I Get a Permit for a Commercial Advertising Sign?

If you have an existing sign or plan to erect one, here's what you need to do.

1. Contact the NDDOT district office. They can determine if the location you want is legally permissible. If it is, you'll be given a permit application.
2. Contact the landowner to get a verbal or written lease. The landowner can simply sign the permit application or write a simple lease agreement:

(name of person erecting sign) has the right to erect a sign on my land at _____ (location) _____.

_____ (landowner's signature) _____

3. Complete the permit application and return it to the district office with the permit fee of \$50. (See reverse side for district office addresses.) NOTE: Zoning status must be completed and signed by proper zoning authority.
4. The district office will mail permit and fee receipt to sign owner after approval is made.
5. Erect the sign.

Non-Commercial Directional and Official Signs

All non-commercial signs with the exception of farm directional signs, can be erected without obtaining a state permit if they meet the following guidelines:

1. The maximum sign size is no larger than 150 square feet.
2. The signs cannot list business names or any form of commercial advertising.
3. Signs must be located on private land and not on highway right of way.
4. Signs outside corporate city limits must be spaced 300 feet apart from any other off-premise sign on the same side of the road. Inside city limits, the spacing is 100 feet apart. On interstate highways, the spacing is 500 feet inside and outside city limits.
5. Signs must be within 50 air miles of the activity on non-interstate highways, 75 air miles on interstate highways.
6. The message on the sign must be oriented towards the activity.
7. At intersections of highways, county roads meeting highways, etc., NDDOT generally has purchased what we call sight-distance triangles. In most cases, the triangles are 300-foot or 500-foot triangles. The proposed signs would not be allowed within any sight-distance triangles. If the sign locations are near intersections, you should contact NDDOT and this can be explained further.
8. No more than three signs pertaining to the activity, facing in the same direction of travel, may be erected along the same highway approaching the activity, regardless of who owns the signs.

Note: In addition to the above guidelines, there are a few additional terms that must be met if a sign is placed on an interstate highway.

